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II. BOOK REVIEWS.

FOUNDATIONS OF LEGAL LIABILITY. By Thomas Atkins Street. In three volumes. Northport, N. Y.: Edward Thompson Co. 1906. pp. xxix, 500; xviii, 559; xi, 572. 8vo.

The present work, in its main features, constitutes a general text-book on the subjects of tort and contract. As indicated by the title, however, the author

treats his subjects in a more historical and more scientific manner than is usually found in treatises on those subjects. Mr. Street goes back to the infancy of the common law and discusses the foundations of legal liability in the light of modern thought. While the work necessarily deals with fundamental questions, it is not rudimentary. The most advanced student of the genesis of our law will find food for thought in these three volumes. The main defects of the work are those which always result from an attempt to deal with a broad subject in limited space. The author is too often compelled to give general conclusions without advising the reader of the method by which they were reached.

The first volume embraces the subject of tort. The author traces the affinity of various wrongs from the early violent trespass down to the latest development of injuries. In taking "violent trespass" as a starting-point, Mr. Street has adopted a sequence much more in keeping with historical revelation than that followed by many other writers. The author is to be highly commended in treating negligence, not as a specific wrong, but, like fraud or malice, as a mere factor playing an important part in large groups of wrongs. This has compelled the adoption of new nomenclature in the division of the so-called "torts of negligence." The author meets this difficulty very satisfactorily by dividing them into "primary and secondary trespass formations." While this may be thought to be a mere matter of terms, it represents an advance in legal knowledge, in that it makes possible the assignment of the conception of negligence to its proper place in legal theory. The principles of "intervening cause" and "successive negligent acts" are not well handled and are even more inadequate than any limitation in space should have made necessary. The brevity of the general treatment is apparent when it is observed that only about two pages are devoted respectively to such subjects as "*res ipsa loquitur*" and "proximate cause." "Assumption of risk" and the "fellow servant doctrine" together cover only ten pages. In the preface Mr. Street claims to have "somewhat happily hit upon the term 'disseisin of chattels'" as expressive of the fundamental idea in conversion. This claim of the author is somewhat surprising in view of the fact that "Disseisin of Chattels" was the subject of three articles by Dean Ames in 3 HARVARD LAW REVIEW (1889), in which the propriety and advantage of the use of this expression were conclusively demonstrated. The value of the first volume is increased by the citation in the text of many concrete cases, which unfortunately are found wanting in the other volumes. These cases are well selected, and are readily distinguishable from the text by being printed in smaller type.

In the second volume the author discusses the subject of contract. While we do not agree with many of the views expressed, — for example, in regard to the nature of the bilateral contract, — still it must be said that the book presents an up-to-date exposition of fundamental principles. In an appendix is found the text of the Negotiable Instruments Law, with some comments by the author, and an incomplete collection of the cases decided under the law. This appendix, occupying some fifty pages, is somewhat out of keeping with the spirit of the balance of the work, and is inferior in practical value to the various special books on the subject.

The third volume embraces an essay on the natural history of remedial law and brief discussions of the various common law actions. The author has not attempted to give the whole law, or even an imposing part of the law, pertaining to those subjects, but does present a consistent account of the origin, evolution and ultimate scope of the various remedies.

The work carries within it conclusive evidence of thorough investigation on the part of the author. Much of it shows original thought. The author has had the courage to overstep the traditional jealousy of the law as to many forms of expression. The vocabulary takes a freer range than is usually found in legal books, adding to the interest and often to the accuracy of the work. To the busy lawyer, immersed in exhaustive treatises on special subjects, who finds himself losing his grasp upon the true relationship existing between those subjects, this work will give entertainment and stimulus in the study of the law. In the citations there will be found to be a dearth of modern decisions, espe-

cially from the courts of this country. This is unfortunate, for the work could have been made more practical in this respect, without in any way changing its spirit or scope. The indexing is fair, and the work of the publishers is excellent.

J. M. B., JR.

STUDIES IN AMERICAN JURISPRUDENCE. By T. F. C. Demarest. New York: The Banks Law Publishing Company. 1906. pp. iv, 414. 8vo.

The essays in this volume are mainly reprints of occasional articles contributed to legal periodicals. They represent two distinct classes. Those of one kind, which relate to historical or philosophical questions, are written in a form so broken by parenthetical clauses and so full of self-conscious phrasing that only the most careful reading will disclose the meaning. Once reached, the ideas are interesting because they show that at least one point of view has been consistently and independently examined. The other and more readable class of the articles, though these also demand close attention, is composed of monographs comparing important legal decisions in their bearing on certain narrow points of law. Three of the essays, occupying nearly two-thirds of the text, relate to the legal problems arising from the use of city streets by railroads. These are perhaps the clearest in the book, showing a commendable freshness of treatment and ability to discard immaterial details. The work suffers, however, from the author's failure to make clear to the reader, as he progresses, the outline or plan of argument.

From its broad and general title one might expect in the volume a comparison of co-ordinate parts of our law or a discussion of salient institutions or fundamental principles. That expectation will be disappointed. The book deserves its title just as much — and as little — as would a collection of opinions on various points in American law. The principal reason for using so general a title seems to be that nothing less inclusive would apply to the extremely diverse subjects which have been brought together. By reason of this scattering character of the topics the present collection seems no more likely to suit the convenience of any one group of readers — except perhaps those interested in the rights of abutting owners in street railway cases — than the periodicals in which they may already be found.

R. N. M.

THE ACT TO REGULATE COMMERCE (as Amended), and Acts Supplementary thereto Indexed, Digested and Annotated, including the Carriers' Liability Act, Safety Appliance Acts, Act Requiring Reports of Accidents, Arbitration Act, Sherman Anti-Trust Act, and others. By C. S. Hamlin. Boston: Little, Brown and Company. 1907. pp. 480. 8vo.

Of the making of books on the interstate commerce laws there is no end. Mr. Hamlin's book provides a mechanical convenience for time-pressed lawyers, — at least, we are inclined to think that will be its only utility. The first part of the book prints the full text of the various statutes that form the body of the interstate commerce legislation, using, so far as available, the text of the Interstate Commerce Commission compilation of June 30, 1906, and indicating by brackets and marginal annotations the various textual changes. The second half, which forms the bulk of the book, contains an index-digest of the following acts of "special interest and importance to shippers and carriers": the Interstate Commerce Act of 1887 and its amendments, including the Rate Bill of 1906; the act relating to testimony before the Interstate Commerce Commission; the immunity statute of 1906 called forth by Judge Humphrey's decision in the Armour case; the Elkins Act; the act to expedite hearings, and the Joint Resolution of June 30, 1906, postponing the operation of the Rate Bill. This index-digest consists of an alphabetical list of the "leading" words and phrases found in the foregoing acts, with a "concise digest of the text relating to the respective words and phrases," and a reference, by page and line, where the words may be found. The same method is pursued with the various other acts.